Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 75-1126

TRANS WORLD AIRLINES, INC.,
Petitioner,

vs.

LARRY G. HARDISON, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, DISTRICT 142, and INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, LOCAL 1650,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

AMICUS CURIAE BRIEF

Of Chrysler Corporation in Support of the Petition for a Writ of Certiorari of Trans World Airlines, Inc.

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AMICUS CURIAE BRIEF

Of Chrysler Corporation in Support of the Petition for a Writ of Certiorari of Trans World Airlines, Inc.

Chrysler Corporation ("Chrysler") supports the petition of Trans World Airlines, Inc. ("TWA") and respectfully urges that this Honorable Court issue its writ of certiorari to review the decision of the Court of Appeals for the Eighth Circuit. This amicus curiae brief is submitted by Chrysler upon the consent of all the parties pursuant to Supreme Court Rule 42.[1]

[1] The written consents of the parties have been filed with the Clerk.

INTEREST OF THE AMICUS CURIAE

Chrysler is a major manufacturer and distributor of motor vehicles and parts, transacting business both in interstate and foreign commerce. Its United States work force, involved in the manufacture and distribution of motor vehicles and parts, numbers in excess of 130,000, and of these, approximately 108,500 employees, or 83%, are encompassed by Chrysler's collective bargaining agreements with the United Automobile, Aerospace, and Agricultural Implement Workers of America ("UAW"). Pursuant to the provisions of the National Labor Relations Act, 29 U.S.C. §§151 *et seq.*, these collective bargaining agreements govern Chrysler's relationship to its employees regarding wages, hours and other terms and conditions of employment.

This case requires the Court to review the constitutionality of the statutory duty prescribed by Title VII of the Civil Rights Act of 1964, as amended ("Title VII"), 42 U.S.C. §2000e(j) of an employer to reasonably accommodate the religious needs of an employee. Chrysler's interest in this action evolves from its need, as a major American employer, to know the specific legal standard applicable to employers when they are confronted with a request for the modification of uniform contractual work standards and hours due to the individual's religious observances.

Chrysler's interest in this action is direct, for as a party to *Blakely v. Chrysler Corp. et al.*, 12 FEP Cases 145 (E.D. Mo. 1975),[2] a case involving allegations of religious discrimination, the law of the Eighth Circuit, as set forth in *Hardison v. Trans-World Airlines, Inc., et al.*, 11 FEP Cases 1121 (8th Cir. 1975)

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[2] The District Court opinion is reproduced in the appendix hereto. As of the filing of this brief, post-trial motions filed by Chrysler pursuant to Rules 52 and 58 F.R.Civ.P. were overruled by order of the District Court dated January 29, 1976.

rev'g, 375 F. Supp. 877 (W.D. Mo. 1974), is presumably dispositive as to many of the legal issues presented in *Blakely, supra.* In fact, the District Court, as it must, relied extensively upon *Hardison* in its *Blakely* opinion.

Furthermore, as the recent decision of the Sixth Circuit in *Reid v. Memphis Publishing Co.*, 521 F.2d 512 (1975), is irreconcilable with *Hardison, supra,* a conflict between the circuits has resulted.[3] As a consequence, insofar as Chrysler operates plants within both jurisdictions, the existence of the inconsistent or varying adjudications by these courts establishes incompatible standards for the guidance of any interstate employer, including Chrysler.

It is also significant to note the effect upon Chrysler of an intra-circuit conflict within the Sixth Circuit. *Compare, Reid v. Memphis Publishing Co.*, 521 F.2d 512 (6th Cir. 1975), *with Reid v. Memphis Publishing Co.*, 468 F.2d 346 (6th Cir. 1972), *and Draper v. U.S. Pipe & Foundry Co.*, 11 FEP Cases 1106 (6th Cir. 1975), *and Cummins v. Parker Seal Co.*, 516 F.2d 544 (6th Cir. 1975), *petition for cert. filed*, 44 U.S.L.W. 3207 (U.S. Sept. 25, 1975) (No. 75-478). Chrysler, which maintains its headquarters and operates numerous facilities in Detroit, Michigan, within the jurisdiction of the Sixth Circuit, is directly entrapped in the vacillation of that Circuit as is TWA.

QUESTIONS PRESENTED

1. Whether, under the establishment clause of the first amendment, it is constitutionally permissible for Title VII of the Civil Rights Act of 1964, as amended, to impose upon an employer the burden of reasonably accommodating the religious preferences of an employee.

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[3] The conflict is not solely between the Sixth and Eighth Circuits. See infra at 9-10.

2. Whether, the duty of reasonable accommodation, if constitutional, requires an employer to modify uniform work obligations, established through collective bargaining, in contravention of contractual seniority rights.

3. Whether, an employee requesting the accommodation of his religious convictions must, prior to requiring his employer to make any accommodation, fulfill a duty of "self-accommodation" by: a) promptly and fully notifying his employer of his affiliation and the religious obligations thereby imposed upon him; b) providing his employer with documentation or other satisfactory means to verify the claimed religious affiliation as well as the resulting religious obligations which conflict with uniform work obligations; c) utilizing those means of relief available solely to the employee (e.g., vacation scheduling, election of shift preference, etc.); d) participating and cooperating in the formulation and implementation of a plan of reasonable accommodation.

4. Whether the EEOC guideline on religious discrimination, 29 C.F.R. § 1605.1(c), 32 Fed. Reg. 10298 (1967), promulgated before the effective date of the 1972 amendments to Title VII of the Civil Rights Act of 1964 should be given retroactive application.

5. Whether the Supreme Court should exercise its supervisory power, through the issuance of its writ of certiorari, to resolve inter-circuit conflicts which have arisen.

STATEMENT OF THE CASE

The statement of the case of TWA fully and accurately sets forth the factual background and the previous proceedings in this case. For the sake of brevity, we adopt that statement.

REASONS FOR GRANTING THE WRIT

I. The Questions Presented Are of National Importance and the State of the Law Is Uncertain

The United States is, by nature, both an industrialized and a reverent country.[4] The questions presented by this case bring these two national characteristics into sharp conflict. It is of the utmost importance that both employers and employees have the benefit of the guidance of this Honorable Court in order to bring about a reconciliation between an individual employee's religious practices and an employer's establishment of uniform work obligations.

Unlike race or sex discrimination, religious discrimination is based upon the presence of intangible concepts uniquely known only to the discriminatee. Religious affiliation and precepts are incapable of visual verification by an employer who, by comparison, can easily ascertain sex or race. Under the present state of the law, the burden of accommodation imposed upon an employer requires a minimal knowledge of the employee's religion and an active role in accommodating it.

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[4] As of April, 1975, approximately 77,994,000 persons were employed in non-agricultural establishments, including manufacturing, wholesale and retail trade, government, transportation and public utilities, finance, insurance and real estate, contract construction and mining. U.S. Bureau of the Census, *Statistical Abstract of the United States: 1975*, Table No. 579 at p. 353 (96th ed. 1975).

Membership in religious bodies for the year 1973 totaled 131,245,000. Some denominations celebrating a Sabbath which commences on Friday sundown and ends on Saturday, include the following: Seventh-Day Adventists—464,000; Jewish—6,115,000.

The burden imposed upon an employer is by no means limited to reasonably accommodating Sabbatarians. Many Americans are affiliated with non-Judeo-Christian religions which celebrate entirely different holidays. The only such religion with a membership in excess of 50,000 is the Buddhist persuasion—60,000. *Id.*, Table No. 63 at p. 46.

The significance of this case cannot be minimized, particularly considering that the constitutionality of the statutory provision and guideline in question[5] has yet to be determined by this Court. The sole religious discrimination case previously to reach this Court was *Dewey v. Reynolds Metals Co.*, 402 U.S. 689 (1971) *aff'g by an equally divided Court*, 429 F.2d 324 (6th Cir. 1970). It is beyond challenge that *Hardison* involves serious questions of federal law which have not been, but should be, settled by this Court.[6] Considering the serious fundamental

[5] The present EEOC Guideline, 29 C.F.R. § 1605.1, was promulgated by the Commission in 1967. The previous regulation, issued in 1966, 29 C.F.R. § 1605.1(a)(3), did not require an employer to reasonably accommodate an employee and it contained the following guideline:

> "(3) The employer may prescribe the normal work week and foreseeable overtime requirements, and, absent an intent on the part of the employer to discriminate on religious grounds, a job applicant or employee who accepted the job knowing or having reason to believe that such requirements would conflict with his religious obligations is not entitled to demand any alterations in such requirements to accommodate his religious needs."

Congress, by the enactment of The Equal Employment Opportunity Act of 1972, Pub.L. No. 92-261, 86 Stat. 103, effective March 24, 1972, added the new section to Title VII, 42 U.S.C. § 2000e(j) which defines "religion". The legislative history as to this specific provision is illuminating:

> "The purpose of this subsection is to provide the statutory basis for EEOC to formulate guidelines because of religion such as those challenged in Dewey v. Reynolds Metals Company, 429 F.2d 325 (6th Cir. 1970), Affirmed by an equally divided court, 402 U.S. 689 (1971)."

Conference Committee Report to the Equal Employment Opportunity Act of 1972, 118 Cong. Rec. 7167 (1972).

Thus, the legislative history directly supports the proposition that, until 1972, the EEOC regulation of 1967 exceeded the statutory scope of Title VII and that it can only be applied prospectively to acts occurring subsequent to the amending of Title VII. *E.g., contra, Riley v. Bendix Corp.*, 464 F.2d 1113 (5th Cir. 1972).

[6] The Eighth Circuit itself was cognizant of the importance of this case for it stated in *Hardison v. Trans World Airlines, Inc.*, 11 FEP Cases at 1122:

> "This appeal presents for our review important questions concerning the requirements of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., and the guidelines on religious discrimination promulgated thereunder, 29 C.F.R. § 1605 (1974)."

constitutional questions concerning this statutory provision and its effect upon the majority of this country's work force, this Court should issue its writ of certiorari in order to pass upon the issues raised by this case.

Further assuming, *arguendo*, the constitutionality of the imposition of the duty of reasonable accommodation, that duty is presently inadequately defined and is without parameters. Congress has merely codified, at 42 U.S.C. § 2000e(j), the following definition of "religion":

> "The term 'religion' includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business."

Similarly the Sixth Circuit has stated:

> "This appeal presents still another difficult problem concerning the prohibition of religious discrimination contained in Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. (1970)."

Reid v. Memphis Publishing Co., 468 F.2d 346, 347 (6th Cir. 1972).

The following cases have upheld the constitutionality of this statutory and/or regulatory provision: *Cummins v. Parker Seal Co.*, 516 F.2d 544 (6th Cir. 1975) *petition for cert. filed*, 44 U.S.L.W. 3207 (U.S. Sept. 25, 1975) (No. 75-478); *Reid v. Memphis Publishing Co.*, 468 F.2d 346 (6th Cir. 1972); *Riley v. Bendix Corp.*, 464 F.2d 1113 (5th Cir. 1972); *Ward v. Allegheny Ludlum Steel Corp.*, 397 F. Supp. 375 (W.D. Pa. 1975); *Weitkenaut v. Goodyear Tire & Rubber Co.*, 381 F. Supp. 1284 (D. Vt. 1974); *Scott v. Southern Calif. Gas Co.*, 7 FEP Cases 1030 (C.D. Cal. 1973).

Other courts have reached a different conclusion. *E.g., Reid v. Memphis Publishing Co.*, 521 F.2d 512 (6th Cir. 1975); *Dewey v. Reynolds Metals Co.*, 429 F.2d 324 (6th Cir. 1970); *Fischer v. Alsing*, 7 FEP Cases 220 (D. Ore. 1974); *Kettell v. Johnson & Johnson*, 337 F. Supp. 892 (E.D. Ark. 1972); *Dawson v. Mizell*, 325 F. Supp. 511 (E.D. Va. 1971).

This definition is grossly inadequate for it seemingly states that religion means religious observance and practice unless an employer cannot reasonably accommodate an employee without undue hardship. There is no definition whatsoever as to what constitutes "undue hardship."

In the absence of any Congressional standard, the courts have attempted to define "undue hardship." Religious discrimination in employment, prohibited by Title VII, has therefore been judicially determined on an *ad hoc* basis by converse definition: religious discrimination against the employee exists if undue hardship does not exist for the employer.[7]

As a consequence of the above, the state of the law is uncertain. The number of EEOC charges and the volume of litigation is increasing steadily. This Court's previous opinions dealing with Title VII prohibitions against sex and race discrimination are of little assistance when dealing with religious discrimination.[8]

[7] *E.g., Young v. Southwest S & L Ass'n*, 509 F.2d 140 (5th Cir. 1975); *Roberts v. Hermitage Cotton Mills*, 8 FEP Cases 319 (4th Cir. 1974); *Yott v. North Am. Rockwell*, 501 F.2d 398 (9th Cir. 1974); *Burns v. Southern Pac. Transp. Co.*, 11 FEP Cases 1441 (D. Ariz. 1976); *Ward v. Allegheny Ludlum Steel Corp.*, 397 F. Supp. 375 (W.D. Pa. 1975); *United States v. City of Albuquerque*, 10 FEP Cases 771 (D. N.M. 1975); *Olds v. Tennessee Paper Mills*, 11 FEP Cases 350 (E.D. Tenn. 1974); *Dixon v. Omaha Pub. Power Dist.*, 385 F. Supp. 1382 (D. Neb. 1974); *Weitkenaut v. Goodyear Tire & Rubber Co.*, 381 F. Supp. 1284 (D. Vt. 1974); *Cooper v. General Dynamics*, 378 F. Supp. 1258 (N.D. Tex. 1974); *Shaffield v. Northrop Worldwide Aircraft Servs. Inc.*, 373 F. Supp. 937 (M.D. Ala. 1974); *Fischer v. Alsing*, 7 FEP Cases 220 (D. Ore. 1974); *Drum v. Ware*, 7 FEP Cases 269 (W.D. N.C. 1974); *Bradington v. International Business Machs. Corp.*, 360 F. Supp. 845 (D. Md. 1973) *aff'd.* 492 F.2d 1240 (4th Cir. 1974); *Claybaugh v. Pacific Northwest Bell Tel. Co.*, 355 F. Supp. 1 (D. Ore. 1973); *Dawson v. Mizell*, 325 F. Supp. 511 (E.D. Va. 1971).

A review of the case law on religious discrimination indicates that each case is judged on its specific facts. Factors deemed relevant include: 1. The religious needs of the employee; 2. The skills utilized or job performed by that employee; 3. The operational requirements of the employer's business; 4. The size of the employer's work force; 5. The number of employees having similar skills or performing similar tasks to that of the employee; 6. The existence of a collective bargaining agreement; 7. The availability of other employees with similar skills; 8. The operational necessity of having that employee's task performed in his absence; 9. The effect of accommodation on other employees.

See generally, P. Kamper, *Religion and the Constitution* (1964); Edwards and Kaplan, Religious Discrimination and the Role of Arbitration under Title VII, 69 Mich. L. Rev. 599 (1971); Annot., 22 A.L.R. Fed. 580 (1975); Note, Religious Observance and Discrimination in Employment, 22 Syracuse L. Rev. 1019 (1971).

The great importance of the questions presented and the vast effect of their resolution certainly constitute "special and important reasons," within the context of Supreme Court Rule 19(1), for the issuance of a writ of certiorari by this Court to review the decision of the Eighth Circuit.

II. The Eighth Circuit Decision Is in Conflict With the Decisions of Other Courts of Appeal

This Court, pursuant to Supreme Court Rule 19(1)(b) should issue its writ of certiorari because of the conflict of the Eighth Circuit's *Hardison, supra,* opinion with the decision of other courts of appeal. In *Hardison* the Eighth Circuit specifically declined to follow the Sixth Circuit opinion rendered in *Reid v. Memphis Publishing Co.*, 521 F.2d 512 (1975).[9] *See Cum-*

[8] For example, while the Court's opinion in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), sets forth the respective burdens imposed upon both the complainant and an employer, the case does not lend itself to the facts which arise in the context of a religious discrimination suit.

[9] The Eighth Circuit stated:

> "In a second appeal, a different panel of the Sixth Circuit (Edwards, J., dissenting) seems to have receded from its prior holding that the regulation was consistent with the statute. *Reid v. Memphis Publishing Co.*, 521 F.2d 512 (6th Cir. 1975). We are more persuaded by the earlier opinion and by Judge Edwards' dissent." *Id.* at n. 5.

mins v. Parker Seal Co., 516 F.2d 544, 554 (6th Cir. 1975) (dissenting opinion), *petition for cert. filed*, 44 U.S.L.W. 3207 (U.S. Sept. 25, 1975) (No. 75-478).

Additionally the Eighth Circuit opinion is at odds with that of the Fifth Circuit in *Johnson v. United States Postal Serv.*, 497 F.2d 128 (1974), *aff'g* 364 F. Supp. 37 (N.D. Fla. 1973), and that of the Fourth Circuit in *Roberts v. Hermitage Cotton Mills*, 8 FEP Cases 319 (1974), *aff'g* 8 FEP Cases 315 (D. S.C. 1973). Both Johnson and Roberts, like Hardison, were members of the Worldwide Church of God and were discharged due to their inability to work on Saturdays. The Fifth and Fourth Circuits each upheld the lawfulness of the discharge and it is submitted that these opinions are irreconcilable with *Hardison*.

It is appropriate that this Court grant the petition for certiorari in order to resolve the inter-circuit conflict which has resulted and to prevent the continuance of inconsistent adjudications.

III. The Statutory Provision and Guideline at Issue Are Unconstitutional

This Court on innumerable occasions has reiterated the following principle enunciated in *Everson v. Board of Educ.*, 330 U.S. 1 (1947):

> "The 'establishment of religion' clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. * * * In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between Church and State'." *Id.* at 15-16.

Many jurists and commentators have questioned the constitutionality of the duty of reasonable accommodation mandated by Title VII § 701(j) and EEOC Regulation 1605.1(c), the legal sources for the imposition of this duty. In *Cummins v. Parker Seal Co.*, 516 F.2d 544 (6th Cir. 1975) (dissenting opinion), the breach of the wall of separation was fully articulated:

> "By regulation 1605.1 and by 42 U.S.C. § 2000e(j) the Federal Government has breached the wall. The Regulation and Section 2000e(j) grant preferences to employees by reason of their religion, forcing modification of seniority systems, overtime scheduling and other forms of employee organization . . . .
>
> "Exemption from uniform work rules for religious reasons has been recognized as an unfair and undue preference under collective bargaining agreements. * * * [citations omitted]
>
> "Granting special privileges because of the exercise of one's religion is just as wrong as denying employment opportunity because of one's religious beliefs. When Government engages in either practice, it discriminates on the basis of religion and abandons its neutrality." *Id.* at 555-56.

The imposition of the duty of reasonable accommodation is violative of the establishment clause of the first amendment. The tripartite test enunciated in *Committee for Pub. Educ. v. Nyquist*, 413 U.S. 756 (1973), contains the applicable standard with which the provisions at issue must comply:

> "[T]o pass muster under the Establishment Clause the law in question, first must reflect a clearly secular legislative purpose, * * * second must have a primary effect that neither advances nor inhibits religion, * * * and, third, must avoid excessive government entanglement with religion. . . ." *Id.* at 773 [citations omitted]

The otherwise secular purpose of Title VII, the eradication of discrimination in employment, is contradicted by 42 U.S.C. § 2000e(j) and by Regulation 1605.1(c). These provisions are not neutral as they affect believers and non-believers; neither are they neutral in intent. In fact, insofar as they advance all religions, they are thereby violative of the establishment clause. *E.g., Lemon v. Kurtzman,* 403 U.S. 602 (1971); *Abington School Dist. v. Schempp,* 374 U.S. 203 (1963); *Illinois ex rel. McCullom v. Board of Educ.,* 333 U.S. 203 (1948); *Everson v. Board of Educ.,* 330 U. S. 1 (1947).

Secondly, these provisions must have a primary effect that neither advances nor inhibits religion and which is evenhanded in operation. *Gillette v. United States,* 401 U.S. 437, 450 (1971). A previous court, reviewing this aspect of the duty to reasonably accommodate properly stated:

> "To construe the Act as authorizing the adoption of Regulations which would coerce or compel an employer to accede to or accommodate the religious beliefs of all of his employees would raise grave constitutional questions of violation of the Establishment Clause of the First Amendment. It is settled that the Government, in its relations with religious believers and non-believers, must be neutral. The Government is without power to support, assist, favor or handicap any religion. [citations omitted]
>
> * * *
>
> No one disputes Dewey's right to his religious beliefs. The question is whether he has the right to impose his religious beliefs on his employer and interfere with the operation of its plant."

Dewey v. Reynolds Metals Co., 429 F.2d 324 at 334-35 (6th Cir. 1970).

This duty imposes its burden not only upon an employer but upon other employees in contravention of bona fide seniority or other contractual provisions which are themselves protected by 42 U.S.C. § 2000e-2(h).[10] Even in the absence of a collective bargaining agreement, employees either non-religious. or of different persuasions from that of the alleged discriminatee, are forced to assume the duties or responsibility of the alleged discrimination due to his religion. The preferential effect is obvious; the provisions favor the religious over the non-religious and advance particular religious. *Torcaso v. Watkins,* 367 U.S. 488 (1961); *Zorach v. Clauson,* 343 U.S. 306 (1952).

Third and lastly, the statute and regulation must avoid excessive government entanglement with religion. *Lemon v. Kurtzman,* 403 U.S. 602 (1971); *Walz v. Tax Comm'n,* 397 U.S. 664 (1970). These provisions necessarily violate this last criterion for both the EEOC and, subsequently, the courts are required to make a determination as to whether the affiliation or beliefs of the employee constitute a religion. Additionally, it must be decided by these tribunals whether the employee's beliefs are sincere. *See, e.g., Kettell v. Johnson & Johnson,* 337 F. Supp. 892 (E.D. Ark 1972); Comment, 44 Fordham L.Rev. 442, 449n.6 (1975). Further, as indicated by *Cummins v. Parker Seal Co.,* 516 F.2d 544, 559 (6th Cir. 1975) (dissenting opinion), there are innumerable instances in which an employee may

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[10] This section provides, in pertinent part:

> "Notwithstanding any other provision of this title, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system . . . provided that such differences are not the result of an intention to discriminate because of . . . religion. . . ."

See Jersey Cent. Power & Light Co. v. IBEW Local 327 et al., 508 F.2d 687 (3d Cir. 1975), *petition for cert. filed,* 44 U.S.L.W. 3084 (U.S. Aug. 1, 1975) (No. 75-182); *cf.* Edwards and Zaretsky, Preferential Remedies for Employment Discrimination, 74 Mich. L. Rev. 1 (1975).

seek an accommodation of any "aspect of religious observance and practice, as well as belief" within the context of 42 U.S.C. § 2000e(j).[11]

CONCLUSION

For the above reasons this Honorable Court should issue its writ of certiorari to review the decision of the Court of Appeals for the Eighth Circuit.

Respectfully submitted,

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[11] *E.g., Young v. Southwest S & L Ass'n*, 509 F.2d 140 (5th Cir. 1975) [atheist objected to prayer conducted at employee meetings]; *Yott v. North Am. Rockwell*, 501 F.2d 398 (9th Cir. 1974) [religious objection of employee to payment of union dues]; *Weitkenhaut v. Goodyear Tire & Rubber Co.*, 381 F. Supp. 1284 (D. Vt. 1974) [church minister's need to attend meetings]; *Abdush-Shadid v. Narcotics Comm'n*, 12 FEP Cases 136 (Sup.Ct. N.Y. 1975) [Muslim's dress requirements].

APPENDIX

United States District Court
Eastern District of Missouri
Eastern Division

William H. Blakely, Plaintiff, vs. Chrysler Corporation, and United Automobile, Aerospace and Agricultural Implement Workers of America, Local 136, Defendants.	No. 74-812 C (4)

OPINION

(Filed December 31, 1975)

Plaintiff William H. Blakely brought this action pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, alleging that defendants, Chrysler Corporation and United Auto Workers Local 136, had discriminated against plaintiff on account of his religion.

This case was tried before the Court without a jury. The Court having considered the pleadings, the testimony of the witnesses, the documents in evidence, the stipulations of the parties, and being fully advised in the premises, hereby makes the following findings of fact and conclusions of law as required by Rule 52, Federal Rules of Civil Procedure:

Findings of Fact

1. Plaintiff, William H. Blakely, is a resident of the State of Missouri and was during all times relevant herein a citizen of the United States.

2. Defendant Chrysler Corporation is a corporation organized and existing under the laws of the State of Delaware, qualified to do business in Missouri. Defendant Chrysler Corporation is engaged in industry affecting commerce which, at all times material to this action, employed more than twenty-five persons during each week of the calendar year and is an employer within the meaning of 42 U.S.C. § 2000e(b).

3. Defendant Local 136, United Automobile, Aerospace and Agricultural Implement Workers of America was a labor organization in an industry affecting commerce at all times material to this action, within the meaning of 42 U.S.C. § 2000e(d).

4. Plaintiff was an employee of defendant Chrysler Corporation from February 15, 1965 to July 7, 1972 and worked in Department 9150, the Trim Department, at all times material herein. During this entire period, plaintiff was a member of defendant Local 136. Local 136 is the certified collective bargaining representative of production and maintenance employees at defendant Chrysler's St. Louis Car Assembly Plant.

5. In February, 1971, plaintiff was baptized as a member of the Worldwide Church of God. This Church observes the weekly Sabbath between sundown Friday and sundown Saturday. In addition, the Church observes various Holy Days throughout the year which commence at sundown on the day prior to the date of the Holy Day and continue until the following sundown. During this period, no work may be performed. Since his baptism, plaintiff has not worked on any of his Sabbaths or Holy Days. It is clear that the Worldwide Church of God is an established Church and that plaintiff held his beliefs sincerely.

6. The regular work schedule at Chrysler's plant was Monday through Friday for eight hours per day, and Saturday work, as overtime. Department 9150 had a quota system, where a certain number of employees could be excused from work on any day, including Saturday. Extra employees were available to replace the excused employees. The quota system was the result of negotiations between the two defendants herein.

7. Plaintiff did not work on August 10, 1971. On August 17, 1971, plaintiff received a written warning for his absence. Plaintiff had given as a reason for the absence that he had attended a Church meeting. Defendant Chrysler had stated, however, that the reason was not acceptable.

8. Plaintiff was absent from work on September 20, 1971, that being one of the Holy Days. As a result of the absence, plaintiff received a one-day disciplinary lay-off. Through intervention by defendant Local 136, however, defendant Chrysler agreed to waive the penalty.

9. Plaintiff received a one-day disciplinary lay-off because of an absence on September 29, 1971.

10. Plaintiff subsequently received a one-day disciplinary lay-off for an absence on Saturday, May 6, 1972. Defendant Local 136 filed a grievance concerning this matter which was appealed to an appeal board, the UAW-Chrysler Appeal Board, in Detroit. The International Union, who was responsible for the grievance at this stage of the grievance procedure, withdrew the appeal after plaintiff was discharged.

11. Plaintiff received a three-day disciplinary lay-off for an absence on Saturday, June 17, 1972. Although Local 136 succeeded in persuading defendant Chrysler to waive the penalty, plaintiff insisted on serving it.

12. On Saturday, June 24, 1972, plaintiff was absent from work. As a result, plaintiff received a five-day disciplinary lay-off. This lay-off was never assessed because plaintiff was discharged. Local 136 did not grieve the lay-off but instead instituted a grievance concerning the discharge itself.

13. Plaintiff had informed his foreman, Jack Stocker, that he would be absent on the dates involved because of his religious observances. Plaintiff had explained his religious beliefs and observances to both company and union personnel. Plaintiff was told by Bill Sanson, his general foreman, that if his religion interfered with his job, he should get another job.

14. Chrysler Corporation had a graduated disciplinary system concerning unexcused absences as follows: Two counselings; one verbal warning; one written warning; a one-day suspension; a three-day suspension; two five day suspensions; and finally, discharge. As to other actions, however, immediate discharge may be imposed. Chrysler posts Rules of Good Conduct, which provide in relevant part as follows:

> Chrysler employees are expected to conduct themselves on Corporation time or premises in a manner that promotes the safety and welfare of employees, encourages congenial work habits, and protects personal and corporation property. Misconduct may result in disciplinary action ranging from reprimand to discharge. Some examples of misconduct, which are not all inclusive, are listed below . . .
>
> 6. Failure or refusal to follow the instructions of supervision . . .
>
> 20. Unauthorized use of Corporation records or confidential information of any kind . . .

15. The evidence establishes that the union, in national negotiations, had tried to change Rule 20, to no avail.

16. As the disciplinary lay-offs were imposed upon plaintiff, he was shown a copy of a supervisor's report concerning his absences. Following the May, 1972 lay-off, plaintiff had requested a copy of the report and had informed his foreman that his purpose was to show it to the federal government, presumably the Equal Employment Opportunity Commission with whom plaintiff had discussed the situation. Both his foreman and the superintendent, Mr. Burke, and his steward, William Lewis, told plaintiff that he could not have a copy. No one informed plaintiff that he could make a handwritten copy of the report.

17. On July 7, 1972, when plaintiff was given his five-day disciplinary lay-off, he again requested a copy of the supervisor's report. The request was denied. Plaintiff then took the report from the supervisor. Plaintiff's foreman and his supervisor directed plaintiff to return the report but plaintiff refused. The union's chief steward and committeeman for the department were summoned and they tried unsuccessfully to get plaintiff to return the document. Plaintiff left the premises to make a copy and returned the report to the company within a short period of time on the same day. Plaintiff had indicated throughout that this was what he intended to do with the report. In his absence, the union committeeman commented that plaintiff was always causing problems with his religious beliefs.

18. Local 136, on its own initiative, filed a grievance protesting plaintiff's discharge. The union processed it through each of the first three steps of the grievance procedure. Defendant Chrysler denied the grievance at these stages. Local 136, in accordance with the grievance procedure, then appealed to the International Union who sent the grievance to the UAW-Chrysler Appeal Board in Detroit. Negotiations at this stage resulted in a settlement agreement that plaintiff would be reinstated with full seniority but without back pay. Plaintiff, believing that he was entitled to back pay and to have his record clear of the disciplinary lay-offs, rejected the settlement. Because of a problem with new addresses, plaintiff did not reject this settlement offer until May, 1974. There is no evidence from which to infer that had plaintiff accepted the offer he would be precluded from further pursuing his rights as to back pay.

19. The evidence is clear that plaintiff was discharged for violations of Rules 6 and 20. The Court finds, however, that the decision to discharge plaintiff for violation of these rules resulted solely from defendant Chrysler's feelings that plaintiff's religious beliefs caused it inconvenience.

20. The evidence establishes that Local 136 filed grievances on plaintiff's behalf and pursued them as far as possible. The grievances were dismissed as lacking merit only when they had reached the stage in the grievance procedure over which Local 136 had no control. Although there is evidence which indicates antagonism on the part of union personnel towards plaintiff's religious beliefs, the Court finds that this antagonism did not contribute to plaintiff's discharge, nor did it amount to a violation of the union's duty toward plaintiff.

21. The Court further finds that plaintiff would have earned a total of $17,179.60 from the date of discharge through May, 1974 when plaintiff rejected the offer of reinstatement. During that period, plaintiff earned $7,312.08, leaving a total of $9,867.52 in back pay lost. The Court finds that plaintiff could have accepted the offer of reinstatement, which would have mitigated his damages, without having lost the right to pursue his claims as to back pay.

22. Plaintiff's attorneys expended 141 hours in the preparation and presentation of plaintiff's case. The Court finds the reasonable value of such services to be $3,300.00.

23. Following his discharge, plaintiff filed a timely complaint with the Equal Employment Opportunity Commission and upon receipt of a Right to Sue letter, timely filed suit in this Court.

Conclusions of Law

This Court has jurisdiction over the subject matter and of the parties to this action in accordance with 42 U.S.C. §2000e-5(f)(3).

The Court has found that plaintiff's discharge was the result of antagonism felt by defendant Chrysler Corporation towards plaintiff's religious beliefs. It is clear that Title VII has been violated by defendant Chrysler Corporation. 42 U.S.C. § 2000e-2.

Chrysler Corporation has failed to establish that an accommodation of plaintiff's religious beliefs would have constituted an undue hardship so as to relieve defendant of the duty of accommodation. *Hardison v. Trans World Airlines, Inc.*, No. 74-1424 (8th Cir., December 16, 1975); *Johnson v. United States Postal Service*, 497 F.2d 128 (5th Cir. 1974). To the contrary, the evidence establishes that defendant made no effort whatsoever to accommodate plaintiff's religious practices. The evidence is also clear that such accommodation was entirely feasible since a quota system for absences existed, with extra personnel available as replacements. See *United States v. City of Albuquerque*, 10 F.E.P. 771, 780 (D.C.N.M. 1975). There was no evidence whatsoever that plaintiff could not be replaced on the days involved without an undue hardship to defendant Chrysler Corporation.

Nor is there any evidence which would indicate that plaintiff refused to cooperate in attempting an accommodation. The duty is on the employer to accommodate the employee's religious observances. *Claybaugh v. Pacific Northwest Bell Telephone Company*, 355 F.Supp. 1 (D.C. Ore. 1973). "Before an employer can assert the defense of non-cooperation, it is incumbent upon it to establish the accommodation *which it has tendered* and with which the employee refused to cooperate."

Hardison v. Trans World Airlines, Inc., supra, at 11 [emphasis added].

It is clear that a union may also be held liable for violations of Title VII. This liability arises if the union

> purposely acts or refuses to act in a manner which *prevents* or *obstructs* a reasonable accommodation by the employer so as to cause the employer to discriminate. *Hardison v. Trans World Airlines, Inc., supra,* at 19 [emphasis added].

The evidence fails to establish that Local 136 violated this duty owed to plaintiff. The union promptly filed and properly pursued the grievances filed, as far as was possible. The union on its own filed a grievance concerning plaintiff's discharge. This grievance did not assert religious discrimination as a grounds for the grievance. The Court can not conclude, however, that this amounted to a breach of the duty the union owed to plaintiff. Plaintiff did not ask union personnel to file this grievance on his behalf, nor did he tell them that he believed his discharge to be the result of religious discrimination. Under these circumstances, the union can not be held liable for failure to assert religious discrimination as a grounds for discharge. There is no evidence which shows that the union acted or refused to act so as to prevent or obstruct an accommodation by the employer. Therefore, there can be no liability.

Judgment will be entered in accordance with this opinion.

JOHN F. NANGLE
United States District Judge

Dated: December 31, 1975.